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November 20, 2003

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

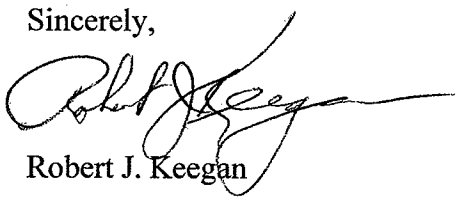
Re: Motion for Reconsideration
Boston Edison Company/Cambridge Electric Light Company/Commonwealth Electric Company, NSTAR Gas Company, D.T.E. 03-47-A

Dear Secretary Cottrell:

Enclosed please find NSTAR's Motion for Reconsideration and its Motion for Extension of Judicial Appeal Period in the above-referenced proceeding.

Thank you for your attention to this matter.

Sincerely,



Robert J. Keegan

Enclosure

cc: Service List

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company Cambridge Electric Light Company Commonwealth Electric Company NSTAR Gas Company	)	D.T.E. 03-47

MOTION FOR EXTENSION OF JUDICIAL APPEAL PERIOD BY BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND NSTAR GAS COMPANY

Pursuant to 220 C.M.R. 1.11(11) of the Department of Telecommunication and Energy's (the "Department") Rules of Practice and Procedure, Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company ("NSTAR") hereby petitions the Department to extend the judicial appeal period to 20 days following final Department action on all motions for clarification, motions for reconsideration and motions for recalculation that may be filed in this proceeding. This motion is necessary to preserve NSTAR's rights to appeal during the pendency of all such motions and to avoid pursuing an appeal that may later prove unnecessary.

For the reasons stated herein, NSTAR requests the Department to grant its motion for an extension of the appeal period in which an appeal may be taken until 20 days after the date of final action on all motions for clarification, reconsideration or recalculation in this proceeding.

Respectfully submitted,

Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
NSTAR Gas Company

By its Attorneys,

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Dated: November 20, 2003

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company Cambridge Electric Light Company Commonwealth Electric Company NSTAR Gas Company	)	D.T.E. 03-47

MOTION FOR RECONSIDERATION OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND NSTAR GAS COMPANY

Pursuant to 220 C.M.R. 1.11(10) of the Department's Rules of Practice and Procedure, Boston Edison Company ("Boston Edison"), Cambridge Electric Light Company ("Cambridge"), Commonwealth Electric Company ("Commonwealth") and NSTAR Gas Company ("NSTAR Gas") (together, "NSTAR" or the "Company") submit this Motion for Reconsideration of the Department's October 31, 2003 Order (the "Order") in this proceeding. The Order approved tariffs that establish an annual adjustment factor to recover costs associated with the Company's pension and post-retirement benefits other than pension ("PBOP") obligations that are not currently being collected in base rates. The approval of this rate-recovery mechanism is consistent with the accounting ruling granted to the Company on December 20, 2002 in NSTAR Electric and Gas Company, D.T.E. 02-78, which authorized the Company beginning January 1, 2003 to:

(a) defer the difference between the level of the pension and PBOP expenses that are included in rates and the amounts that must be booked in accordance with FAS 87 and FAS 106; and

(b) record as a regulatory asset the amount of its current and future Additional Minimum Liability to reflect the Company's ability to recover in rates over time its actual pension liability.

In approving the rate-recovery mechanism that gave effect to its accounting order, the Department properly held that its approval of a reconciliation mechanism "would lead only to the equitable result that customers would pay no more than the actual costs incident to" the support of pension and PBOP benefits for the utility workers who provide daily service to customers until retirement. Order at 27. However, for that portion of the Company's pension and PBOP benefits that accrued during the first eight months of 2003 above the amount already included in rates (approximately $20 million), the Order has mistakenly or inadvertently denied recovery of these expenses in a manner that is without justification, contrary to the record evidence and inconsistent with precedent.

Accordingly, the Company respectfully requests reconsideration of that portion of its order which denies the Company the ability to continue to defer for future recovery pursuant to the Pension Adjustment Mechanism ("PAM") the difference between its FAS 87 and FAS 106 determined pension and PBOP expenses and the pension and PBOP amounts recovered in rates during the first eight months of 2003.

I. STANDARD OF REVIEW

The Department's standard for reviewing a motion for reconsideration and clarification of its decisions is well established. Reconsideration of previously decided issues is granted when circumstances dictate that the Department take a fresh look at the record for the purpose of modifying a decision reached after review and deliberation. Consolidated Arbitrations, Phase 4-M at 5 (1999), citing North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991);

Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987). Rather than simply rearguing issues considered and decided, a motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. Consolidated Arbitrations, Phase 4-M at 5 (1999), citing Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). In the alternative, a motion for reconsideration may be appropriate upon a showing that the Department's disposition of an issue was the product of mistake or inadvertence. Consolidated Arbitrations, Phase 4-M at 5 (1999), citing Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).[1]

II. ARGUMENT

A. The Company's Rate Freeze Does Not Bar Recovery of Pension and PBOP Expenses That Would Be Recovered Outside of Base Rates After the Rate Freeze Has Ended.

For the reasons stated below, the Company respectfully submits that the Department mistakenly or inadvertently misconstrued the record when it found that the Company's request for recovery of pension and PBOP expenses over and above what it collected in rates during the first eight months of 2003 constitutes a "request to be exempted from the restrictions of their voluntary rate freeze." Order at 32.

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1 Reconsideration is also appropriate where parties have not been "given notice of the issues involved and accorded a reasonable opportunity to prepare and present evidence and argument" on an issue decided by the Department. Petition of CTC Communications Corp., D.T.E. 98-18-A at 2, 9 (1998).

First, the record is clear that any rate changes resulting from the Company's proposal will not take effect until four months after the rate freeze ends. The four-year rate freeze was approved by the Department in Joint Petition of Boston Edison, Cambridge Electric Light Company, Commonwealth Electric Company and Commonwealth Gas Company, D.T.E. 99-19 (1999) (the "Rate Plan Order"). Under the rate freeze, the Company was prohibited from "raising distribution rates, unless exogenous factors result in cost changes." Order at 31, fn.27, citing D.T.E. 99-19, at 13, 22-27. In this case, the Department has acknowledged that, under the Company's proposal, the first rate change would not occur until January 1, 2004 (four months after the expiration of the rate freeze in August 2003), and therefore, the Company's proposal would be unaffected by the rate freeze. Interlocutory Order on Motion to Dismiss, D.T.E. 03-47, at 10 (August 7, 2003). "*The freeze is on changes to rates before September 2003, not on mounting proposals before that date, to be effective after that date.*" Id. (emphasis added). On that basis, the Department dismissed the Attorney General's argument that the Company's proposal violates the merger rate freeze. Interlocutory Order on Motion to Dismiss, D.T.E. 03-47, at 10 (August 7, 2003).

Second, in the Order, the Department based its decision to deny the recovery of these costs based on the conclusion that pension and PBOP expenses are "the type of expenses that the Companies agreed to absorb during the rate freeze." Order at 33. The Department did not cite to or provide any evidentiary foundation or support for this finding. General Laws Chapter 30A, § 14(7)(e) requires that the Department's determinations be based on substantial evidence. See also Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, at 867-68 (1997); Martorano v. Department of

Public Utils., 401 Mass. 257, 261 (1987); Costello v. Department of Pub. Utils., 391 Mass. 527, 539 (1984).

The Department's Order further states:

> If the Department allowed the Companies to recover additional expenses incurred during the rate freeze, we would be allowing the Companies to contravene the intent and purpose of the rate freeze.

Id., citing North Attleboro Gas Company, D.P.U. 93-229 (1994) ("North Attleboro"). The Department mistakenly or inadvertently failed to identify or review any evidence to support its conclusion that the recovery of pension expense for the first eight months of 2003 contravenes "the intent and purpose of the rate freeze."[2] In fact, the stated purpose and intent of the rate freeze was for the Company to honor its commitment "not to raise any of Boston Edison's, Cambridge Electric's, [Commonwealth]'s and [NSTAR Gas'] distribution rates for four years following the consummation of the merger, unless exogenous factors result in cost changes." D.T.E. 99-19, at 13. The Company did not at any time volunteer to "absorb" any and all cost changes that could possibly occur during the rate freeze period, regardless of the cause, magnitude or effect of the cost increase. Nor did the Department cite to any such commitment in its order denying the recovery of pension and PBOP expenses during the rate freeze. No utility could ever submit to a prolonged rate freeze commitment if, in fact, it would forced to "absorb" all cost changes

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[2] Moreover, the Department's Order failed to distinguish its earlier Interlocutory Order on Motion to Dismiss, where it found that "[t]he freeze is on changes to rates before September 2003, not on mounting proposals before that date, to be effective after that date." Interlocutory Order on Motion to Dismiss, D.T.E. 03-47, at 10 (August 7, 2003). There, the Company established that under a rate freeze there is a legal distinction between: (1) seeking a base rate increase during the term of the rate freeze period; and (2) seeking an adjustment in base rates after the rate freeze period based upon actual costs incurred over a historical period that includes the rate freeze term. Opposition of the Company at 14-16.

occurring during that time period regardless of the magnitude of the cost increase and the utility's ability to control those costs.

This point has been acknowledged by the Department, which has held that a rate freeze would not bar rate changes where appropriate circumstances were found to be present. "Extraordinary economic circumstances have always been a recognized basis for any gas or electric company to petition the Department for changes to tariffed rates." Eastern Enterprises/Colonial Gas Company, D.T.E. 98-128, at 56 (1999). The Department has further stated that "if serious adverse circumstances were presented during a valid rate freeze, the Department would not be indifferent to reasonable adjustments, properly supported." Id. at 56-57.

In this case, the Department found the "appropriate" circumstances to be present when it approved the Company's proposed pension reconciliation mechanism. The Department concluded that, absent the approval of the Company's proposed pension reconciliation mechanism, "there is every reason to believe the problem would recrudesce . . . [which] could create a perpetual cycle of rate cases, driven principally by the accounting rules rather than by sound ratemaking principles or customer interests." Order at 28.

> In the absence of any action by the Department to change the historical approach to pension and PBOP recovery, and in the absence of the Companies' filing base rate cases, the Companies and, potentially, customers will face detrimental financial consequences relating to an extraordinary charge against common equity and the write-down of the Regulatory Asset and the prepaid pension amount.

Id. In the face of the serious adverse circumstances demonstrated by the Company, the Department's Order fails to distinguish why the rate freeze, standing alone, should bar

the recovery of the additional amounts at issue. Moreover, the Department recently reaffirmed the principle that extraordinary economic circumstances have always been a recognized basis for any gas or electric company to petition the Department for changes in tariffed rates. Boston Gas Company, D.T.E. 03-40, at 497, fnt. 263 (2003), citing D.T.E. 98-31, at 18; D.T.E. 98-128, at 56.

> This review is consistent with G.L. c. 164, §§ 93 and 94 and with the general requirement that rates must be just and reasonable. Statute, of course, governs, and, where need be, *supercedes any regulatory arrangement prescribed by the Department.* D.T.E. 98-27, at 14-21.

Id. (emphasis added).

In addition, the North Attleboro precedent relied on by the Department to support its denial of recovery for the deferrals associated with the first eight months of 2003 is inapplicable for three reasons. First, in North Attleboro, the company sought to defer expenses of approximately $40,000 per year in the context of a rate freeze settlement that required a minimum of $100,000 to invoke the appropriate *force majeure* clause. In this case, the Company's rate freeze requires a threshold well below the additional $20 million at issue, i.e., $2.4 million for Boston Edison, $175,000 for Cambridge, $625,000 for Commonwealth and $425,000 for NSTAR Gas. D.T.E. 99-19, at 26-27 (1999).

Second, in North Attleboro the Department denied a company petition *to defer* expenses until the Department determined the appropriate ratemaking treatment in North Attleboro's next general rate proceeding. In this case, the Department had already *granted* the Company's request for a deferral, in the context of an anticipated reconciliation mechanism that would permit their recovery to be filed with the

Department. Boston Edison Company/Commonwealth Electric Company/Cambridge Electric Light Company/NSTAR Gas Company, D.T.E. 02-78 (2002).

Third, in North Attleboro the Department explicitly stated that it was clarifying its standard for the review of requested deferral accounting treatment for "*extraordinary pretest year expenses.*" D.P.U. 93-229, at 7 (emphasis added). The Department's statements in North Attleboro simply do not address the circumstances that are presented in this case where the Company is seeking recovery of an expense that has already been deferred pursuant to a valid Department order, and is not properly classified as an *extraordinary pretest year expense.*[3]

B. The Department Mistakenly or Inadvertently Erred in Finding That the Subject Deferred Costs Do Not Qualify as Exogenous Costs.

The Department mistakenly or inadvertently misconstrued the record when it found that pension and PBOP expenses incurred during the first eight months of 2003 would not qualify as exogenous costs. Order at 32. Building on its initially mistaken conclusion that the recovery of the first eight months of 2003 expenses would violate the rate freeze, the Department concludes that the request for recovery "is to be exempted from the restrictions of their voluntary rate freeze." Id. The Department then goes on to find that the "only method" to seek exemption from the rate freeze would be if the costs qualified as exogenous costs. Id. Having established this false premise (i.e., that the request was inconsistent with the rate freeze), the Department mistakenly concludes, based on no evidence or argument, that "these additional expenses would not qualify as exogenous costs…". Id.

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[3] Notably, the Attorney General previously cited North Attleboro in his opposition to the Company's original request for a deferral in D.T.E. 02-78, which the Department approved over the objections of the Attorney General.

Even if the recovery of the expenses incurred during the first eight months of 2003 depended on whether they qualified as exogenous costs, the Department's conclusion that these costs do not qualify is an error of law and a violation o the Company's due process right to have an opportunity to demonstrate that the expense in question is, in fact, an exogenous cost. First, there is no evidence to support the proposition that these costs were not exogenous costs. This is understandable since, as the Department explicitly acknowledged, the Company "does not seek to recover these expenses as exogenous expenses during the rate freeze." Id.[4] Nor was there any notice that qualification of exogenous costs would be at issue in the case.

> [T]he requirement that parties be given notice of the issues involved and accorded a reasonable opportunity to prepare and present evidence and argument must be scrupulously respected. See, Massachusetts Outdoor Advertising Council v. Outdoor Advertising Board, 9 Mass. App. Ct. 775, 783-786 (Mass. App. 1980).

Petition of CTC Communications Corp., D.T.E. 98-18-A at 9 (1998). Reconsideration is appropriate where a company has not been "given notice of the issues involved and accorded a reasonable opportunity to prepare evidence and argument" on an issue to be decided by the Department. Id.

Despite the absence of: (1) record evidence demonstrating that the additional expense is not exogenous; (2) proper notice that this subject was at issue in the case; or (3) any adequate statement of reasons for the rejection of the additional expense as an exogenous expense, the Department makes the unsupported finding that the additional expense "would not qualify as exogenous costs because the recent volatility on pension

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[4] As indicated above, it did seek, and was granted the right to defer the costs in D.T.E. 02-78. Thus, the Department's findings in the Order are a result of mistake and inadvertence because both the approval of the deferral request and the Department's subsequent findings in its order on the Attorney General's motion to dismiss are at odds with the Order on this issue.

and PBOP expenses affects all industries, not just electric and gas utilities." Order at 32-33, citing D.T.E. 99-19, at 13, 25. Through mistake or inadvertence, the Department cites D.T.E. 99-19 for the proposition that "the recent volatility on pension and PBOP expenses affects all industries, not just electric and gas utilities." Neither the Department's Order in D.T.E. 99-19, nor any of the specific pages in D.T.E. 99-19 cited by the Department, address, much less provide substantial evidence for the Department's unsupported conclusion.[5]

General Laws Chapter 30A, § 14(7)(e) requires that the Department's determinations be based on substantial evidence. See also Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 867-868 (1997); Martorano v. Department of Public Utils., 401 Mass. 257, 261 (1987); Costello v. Department of Pub. Utils., 391 Mass. 527, 539 (1984).[6] Moreover, inasmuch as there are no subsidiary findings based upon record evidence to support the conclusion that the expenses at issue do not qualify

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5 Of course, the impact of the volatility of pension and PBOP costs is different for utilities, in general, and companies subject to a rate freeze, in particular. Had the Department raised this as an issue during the proceedings, the Company would have presented evidence on this matter. Moreover, the requirement that exogenous costs uniquely affect utility companies was developed in the context of price-cap plans that were based on an inflation-based formula. The purpose of the requirement that it uniquely affect utility companies stemmed from the assumption that the costs that affected all industries would most likely be reflected in the inflation formula. Boston Gas Company, D.P.U. 96-50 (Phase I), at 291 (1996). This purpose is not applicable to the Company's rate freeze.

6 If the Company had sought exogenous cost recovery of the additional expenses, or in the alternative, were requested by the Department to demonstrate in this case that such additional expenses properly met the "exogenous cost" criteria of D.T.E. 99-19, the Company would have presented record evidence to demonstrate that the additional expenses are a proper "exogenous cost" for which the Company is entitled to recover. However, the record is silent on this issue, which was never raised by any party in this case. See Commonwealth Electric Company, D.P.U. 89-131, at 41 (1989) (The record contains nothing for the Department to consider and form the basis of a decision); NYNEX, D.P.U. 94-50, at 422 (It was improper to introduce an adjustment for the first time on brief which no parties had the opportunity to address); Verizon-Massachusetts, D.T.E. 98-57 (Phase I-B) (Objections raised for first time on brief hinders the Department's ability to thoroughly investigate issues). This case suffers from a worse infirmity – not only did the case not raise relevant issues on this critical finding, but no party even briefed the issue.

as exogenous costs, the Department's Order constitutes legal error. Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 868-871, 875 (1997).

Accordingly, the Department's findings that the Company's deferred costs for the first eight months of 2003 are barred by the rate freeze and are not exogenous are based on mistake or inadvertence. At a minimum, due process and substantial evidence requirements necessitate that the record be reopened in this proceeding or the Company be allowed to initiate another proceeding and be provided the opportunity to present evidence on the exogenous aspects of this expense.

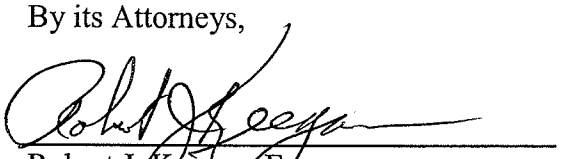
III. CONCLUSION

For the foregoing reasons, the Company's Motion for Reconsideration should be granted.

Respectfully submitted,

BOSTON EDISON COMPANY
CAMBRIDGE ELECTRIC LIGHT COMPANY
COMMONWEALTH ELECTRIC COMPANY
NSTAR GAS COMPANY

By its Attorneys,



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Dated: November 20, 2003